EXHIBIT B

(Redacted as Described in the Motion to Seal)

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

SYNGENTA CROP PROTECTION, LLC

Plaintiff

vs. CIVIL ACTION NO:

WILLOWOOD, LLC, et al. 1:15-CV-274

Defendants

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The Videodeposition of JOSEPH M.D. FORTUNAK, Ph.D. was held on Monday, October 10, 2016, commencing at 9:00 a.m., at Kirkland & Ellis, LLP, 655 15th Street, N.W., Suite 1200, Washington D.C. 20005, before Christina Essi Pagano, Notary Public.

Reported By: Christina Essi Pagano, RPR

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TaiHe documentation, I think it would be very, very difficult to reproduce this in order to see what levels would regularly project into an isolated azoxystrobin technical.

Q. And '761 patent requires that the condensation step -- and can we just agree that we'll call it the condensation step for purposes of this discussion?

A. Yes.

Q. The '761 patent requires that the condensation step be done in the presence of between .1 molar percent and 2.0 molar percent DABCO, correct?

A. That's right.

Q. And from this testing performed by CAC Shanghai, you could not quantify the amount of azoxystrobin -- strike that.

From this testing done by CAC Shanghai, you could not quantify the amount of DABCO that was present

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during the condensation step of manufacture of azoxystrobin supplied by TaiHe to Willowood, correct?

A. That's correct.

Q.

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Q. But the CAC testing you weren't able to quantify how much DABCO was used in the manufacturing process, correct?
A. That's correct.
Q. And from the Syngenta testing you were not able to quantify how much DABCO was used in the manufacturing process, correct?
A. That's correct.
Q.

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BY MR. TILLER:

Q. Excuse me, doctor. Earlier today you testified that there were two basic facts to support your conclusion that Willowood is substantially likely -- or, that there is a substantial likelihood that Willowood has and continues to practice at least Claims 1, 3, 4, 5, 9 and 10 of the '761 patent. And the first fact you said was the testing, and we discussed the Syngenta testing, the CAC testing, and the JDM testing, correct?

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A. Correct.

Q. And there's no other testing that you're aware of that supports your opinion that there's a substantial likelihood that Willowood has and continues to practice certain claims of the '761 patent, correct?

A. That's right. And I don't believe I referred to any additional testing in my report.

Q. I don't believe you do either. I just wanted to make sure there was nothing else that I wasn't aware of.

You also said that your second fact was that -- well, strike that.

Why don't you tell me what your second fact is again.

A. So the second fact is if you're going to use a reagent, in this case, a catalyst in a process, it's only logical to run it in a commercially reasonable manner.

Q. Okay. So it's based on an assumption that you make that if manufacturing azoxystrobin using DABCO, you would use it in a commercially reasonable

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amount, correct?

A. Yes, because I'm a process chemist and that's what we do.

Q. Okay. And that commercially reasonable amount you believe is between 0.1 molar percent and 2.0 molar percent, correct?

A. Correct.

Q. Why do you believe that that is a commercially reasonable amount?

A. Because the '761 patent itself establishes those ranges. And from conversation that I had with Alan Whitton at Syngenta, asking about how they operate this final stage of the '761 process using DABCO, in order to confirm my understandings of what Syngenta finds.

Q.

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Q. But commercially reasonable companies do engage in design-around efforts, to the best of your knowledge, correct?

MS. BALTZER: Objection, foundation.

THE WITNESS: That's correct.

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sold to Willowood?
MS. BALTZER: Objection, foundation.
THE WITNESS: In terms of how much it contributes to the cost of the raw materials, it won't be a large contribution.

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Q. So after the quotation from the '761 patent that you cite to, you say, quote, given the information in the '761 patent, it would not be commercially reasonable for Willowood's manufacturer, (TaiHe) to use more DABCO than 2 molar percent, which would add to the manufacturing expense without any significant improvement in yield.
Do you see that?
A. Yes.
Q. What is the expense of DABCO? What does it cost?
A. Not terrible expensive.
Q. Okay. So increasing DABCO from, for example, 1.9 molar percent to 2.1 molar percent, do you know how much that would increase the cost of manufacturing the azoxystrobin produced by TaiHe and

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BY MR. TILLER:

Q. Okay. When you used the term increase toxicity, to whom would it be toxic?

A. It could be toxic either to the plants that to is used to be applied to or it could be toxic to people who use the agriculture end product that comes from the plant.

Q. What are the toxic effects?

A. I don't recall.

Q. Putting aside the amount of DABCO used in the manufacturing process, how much of this residue would have to be in the azoxystrobin product that was applied to the plants, how much residue would have to be in that product in order for it to be toxic?

MS. BALTZER: Objection, foundation.

THE WITNESS: I do not know that that has been determined.

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BY MR. TILLER:

Q. So when you say 723, we're looking at Weintritt?

A. Yeah, at Weintritt.

Q. Okay.

A. And if I compare Weintritt with a compound patent for azoxystrobin, which I believe is the '076, both of those cover millions and millions of compounds. And the structure azoxystrobin would be covered under both of those.

Q. Under '076 and Weintritt?

A. Yeah.

Q.

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1 Q. Okay. So I thought we had agreed that
2 Weintritt claimed a process for preparing compounds of
3 the general formula one and we agreed that general
4 formula one includes, among many other compounds, but
5 it includes azoxystrobin, correct?
6 A. That's correct.
7 MS. BALTZER: Objection, foundation.
8 BY MR. TILLER:
9 Q. That's correct, correct?
10

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12 Q. Well, Weintritt is claiming the synthesis
13 of azoxystrobin in the presence of 2 to 40 molar
14 percent of DABCO, correct?
15 MS. BALTZER: Objection, foundation.
16 THE WITNESS: Looking at the scope of
17 Weintritt's claims, one could infer that -- one could
18 say that this is contemplated. It's not exemplified,
19 nor is it explicitly laid out. It said, no, I can make
20 azoxystrobin with 2 mole percent of DABCO.
21 BY MR. TILLER:

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1 Q. So you don't think the fact that Weintritt
2 claims the production or the manufacture of
3 azoxystrobin in the presence of 2 to 40 molar percent,
4 you don't think that despite that claim, that a person
5 of ordinary skill in the art would not read this to
6 disclose the manufacture of azoxystrobin in the
7 presence of 2 to 40 molar percent of DABCO?
8 MS. BALTZER: Objection, foundation, asked
9 and answered.
10 THE WITNESS: I'm going to answer you as a
11 chemist. You said the word manufacturing.
12 Manufacturing means that I'm making something and I can
13 make it, I can make it efficiently, and I can sell it.
14 The scope of Weintritt's claims would cover the
15 manufacture of 2 mole -- of azoxystrobin using
16 different components that he hasn't exemplified the use
17 of in his examples, and using down to 2 mole percent of
18 DABCO. So within that -- so using 2 mole percent of
19 DABCO and using a condensation to make azoxystrobin in
20 that way would fall under the claims of Weintritt.
21 BY MR. TILLER:

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Q. Okay. So still, sitting here today, you cannot conclusively say how much DABCO was used during the manufacture of the azoxystrobin technical included in that sample of Azoxy 2SC, correct?
MS. BALTZER: Objection, form.
THE WITNESS: So the best available information you can get is to measure the presence of DABCO, the byproducts derived from it, and that doesn't allow you to quantify how much DABCO was used.
BY MR. TILLER:

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Q. Understood. Actually, the best available information would be go and take samples of the azoxystrobin technical during the manufacturing and then test that, correct?
MS. BALTZER: Objection, form.
THE WITNESS: Correct, but that hasn't been offered as an option by Willowood or TaiHe.
BY MR. TILLER:
Q. Hasn't been asked, hasn't been asked, has it?
MS. BALTZER: Objection, form.
THE WITNESS: I don't know.
BY MR. TILLER:
Q.